

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MITCHEL R. MERCIER**

Claimant

VS.

**BRADLEY REAL ESTATES, INC.**

Respondent

AND

**RELIANCE NATIONAL INS. CO., c/o  
THE WESTERN GUARANTY FUND**

Insurance Carrier

Docket No. 258,302

**ORDER**

Claimant requested review of the June 9, 2006, preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

**ISSUES**

The Administrative Law Judge (ALJ) granted respondent's motion to discontinue medical benefits relative to treatment of claimant's liver problems, specifically Budd-Chiari syndrome.

Claimant requests that the Board find that his liver disease was either directly caused by his exposure to toxic chemicals or the lack of proper treatment, and that respondent and its insurance carrier (respondent) should be responsible for the subsequent and continuing treatment.

Respondent argues that claimant failed by a preponderance of the credible evidence to meet his burden of proving his Budd-Chiari syndrome was caused by his exposure to chemicals in the workplace. Accordingly, respondent requests the Board affirm the ALJ's June 9, 2006, Order.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the record presented to date, the Board makes the following findings of fact and conclusions of law:

In August 1999, claimant was injured when he came into contact with a product containing sodium hydroxide and 2-butoxyethanol, causing a chemical burn on his lower legs. He was originally treated with antibiotics by Dr. Kevin Norris, but within a week he developed a deep vein thrombosis (DVT) in his left lower extremity, for which he was prescribed Coumadin. Claimant was evaluated in July 2000 because he continued to have swelling in his legs and was complaining of epigastric abdominal pain. By November 2000, claimant was diagnosed with Budd-Chiari syndrome, which is manifested by thrombosis of the hepatic vascular system.

In an Order of December 13, 2000, the ALJ ordered respondent to provide claimant with medical care. The ALJ, however, specifically did not authorize performance of a liver transplant without a further hearing. On March 1, 2004, claimant filed an Application for Preliminary Hearing, requesting authorization for additional medical treatment in the form of surgical intervention when it becomes necessary. A hearing was held on April 13, 2004, at which time the ALJ appointed Dr. Mark Uhl as a neutral physician to do an independent medical examination (IME) of claimant. Dr. Uhl found that claimant had an underlying hypercoagulable state that caused his Budd-Chiari syndrome. Dr. Uhl stated that after extensive research, he could find no data to support a connection between exposure to sodium hydroxide or 2-butoxyethanol and development of Budd-Chiari syndrome. Therefore, it was Dr. Uhl's opinion that claimant's liver problems were not related to his exposure to chemicals in August 1999. On September 24, 2004, the ALJ issued an Order finding that claimant failed to sustain his burden of proof to establish that his liver disease was causally related to his chemical exposure at his workplace. Respondent was "relieved of any further obligation for treatment of Claimant's liver disease . . . ."<sup>1</sup> This Order was appealed to the Board, and the Board affirmed the ALJ in an Order dated November 9, 2004.<sup>2</sup>

On December 8, 2004, claimant filed an Application for Preliminary Hearing, claiming he was being treated for his DVT with Coumadin and requesting that respondent be ordered to pay for his Coumadin prescriptions. After a hearing, on January 12, 2005, the ALJ authorized Dr. Kevin Norris to treat claimant solely for purposes of his DVT.

On September 27, 2005, claimant filed another Application for Preliminary Hearing, requesting treatment for his liver condition. He claimed that Dr. Parmet had issued a report

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<sup>1</sup> ALJ Order filed September 24, 2004.

<sup>2</sup> *Mercier v. Bradley Real Estates, Inc.*, No. 258,302, 2004 WL 3089851 (Kan. WCAB Nov. 9, 2004).

indicating that his Budd-Chiari syndrome developed as a result of treatment or discontinuation of treatment from the work-related injury. At a hearing on January 13, 2006, claimant introduced, among other records, a report of Dr. Parmet dated August 29, 2005. In that report, Dr. Parmet stated that once claimant was identified as having a hypercoagulable state, he should not have had his Coumadin stopped, and then stated: "He did not have Budd-Chiari syndrome prior to cessation of the anticoagulants, but did develop it after that time."<sup>3</sup> In an Order dated January 13, 2006, the ALJ found that claimant was entitled to medical care for his end-stage liver disease and his DVT. Dr. Norris remained designated as claimant's treating physician for his DVT. Respondent was to provide claimant with the names of two qualified physicians from which claimant could choose one as an authorized treating physician for his end-stage liver disease.

Dr. Parmet's deposition was taken by respondent on March 15, 2006. Dr. Parmet testified that as a result of being contaminated with cleaning chemicals, claimant suffered chemical burns to his legs. Claimant developed cellulitis and subsequently developed a DVT in his left leg. The DVT was caused by the burn injuries, but was partially caused by claimant's hypercoagulable state, which was a preexisting, genetic problem caused by a lack of a protein that prevents clots from forming. Dr. Parmet stated that claimant could have developed the clot without having had the burns, but in this setting, he opined that the burns contributed to the clots in claimant's leg. Claimant was treated with the anticoagulant Coumadin for six months after the formation of the DVT, which is the normal protocol, unless the hypercoagulable state is present. Once a hypercoagulable state is identified, a person should be anticoagulated for life. Claimant's preexisting hypercoagulable state was apparently not identified by claimant's treating physician.

Dr. Parmet opined that when claimant's Coumadin treatment ended in the spring of 2000, his condition concerning his legs and DVT would have been at maximum medical improvement.

In the fall of 2000, claimant suffered another clot, this time in the portal system. This second clot damaged claimant's liver and caused his Budd-Chiari syndrome. The portal system is isolated from the other veins in the body and flows to the liver from the gastrointestinal tract. Consequently, Dr. Parmet opined that there is no mechanical connection between the DVT in claimant's leg and the blood clotting in his liver. The vein in claimant's leg where the DVT formed is unrelated to the portal system.

Dr. Parmet stated that because of claimant's hypercoagulable state, he should have been continued on Coumadin rather than having it stopped after six months. Although claimant's lifelong need for anticoagulation was not caused by the chemical burns or the DVT, the burns and the development of the DVT should have served as a notice to look for and identify a hypercoagulable state. The burns and development of the DVT in

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<sup>3</sup> Parmet Depo., Ex. 3 at 2.

claimant's leg did not cause or necessitate lifelong anticoagulation. The need for lifelong anticoagulation is based solely upon claimant's preexisting hypercoagulable state. Claimant's hypercoagulable state existed before his chemical burns and remained unchanged thereafter. Having a DVT in his leg did not change his coagulation capability. Dr. Parmet stated that claimant's Budd-Chiari syndrome is not related to the August 1999 chemical exposure. Claimant's preexisting hypercoagulable state led to the portal vein thrombosis and subsequently his Budd-Chiari syndrome.

On April 13, 2006, respondent filed an Application for Preliminary Hearing requesting that it be allowed to terminate medical benefits related to claimant's liver condition. Respondent also filed a Motion to Terminate Medical Treatment on April 27, 2006. A preliminary hearing was scheduled for June 2, 2006. However, on June 1, 2006, respondent's attorney faxed a letter to the ALJ advising that the parties had agreed to submit the deposition of Dr. Allen Parmet in support of respondent's motion to terminate medical treatment for claimant's liver condition. The letter indicated that the parties agreed that no other evidence would be submitted for consideration of respondent's motion. The ALJ found that claimant's Budd-Chiari syndrome developed because of a preexisting propensity for blood clots that was neither caused by nor aggravated by claimant's work injury and granted respondent's request to discontinue payment of medical benefits relative to claimant's liver problems. The Board agrees with the ALJ's conclusion.

The Board is not unmindful of the seemingly contrary opinions of Drs. Norris, Forster, and Rea. However, their reports do not directly address the analysis of Dr. Parmet. In addition, Dr. Rea's causation opinion was in response to a compound question:

Whether the chemical burns, DVT, and Budd-Chiari syndrome were caused by exposure to Square One, **or if any of them were caused by exposure to Square One?**

Yes.<sup>4</sup> (Emphasis added.)

As such, it cannot be determined whether Dr. Rea was relating the Budd-Chiari syndrome to the chemical exposure or just the chemical burns and/or the DVT.

Based on the record compiled to date, the Board finds that the greater weight of the evidence fails to prove a direct causal connection between claimant's work-related injury and his subsequent development of Budd-Chiari syndrome.

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bruce E. Moore dated June 9, 2006, is affirmed.

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<sup>4</sup> Letter of Dr. William J. Rea dated December 22, 2005.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of September, 2006.

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BOARD MEMBER

c: Jeffrey E. King, Attorney for Claimant  
Douglas C. Hobbs, Attorney for Respondent and its Insurance Carrier